

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JAMES A. CLARKE,

Plaintiff,

*07 CV 11578*  
*Judge Swain*

- against -

CATAMOUNT SKI AREA, WILLIAM GILBERT,  
DONALD EDWARDS, CATAMOUNT DEVELOPMENT  
CORPORATION, ZACK LANG, an infant by his mother  
and natural guardian CARI LANG, and CARI LANG,  
individually,

*Defendants ZACK  
LANG and CARI LANG  
Demand Trial by Jury*

*ANSWER*

Defendants.

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Defendants ZACK LANG, an infant by his mother and natural guardian CARI  
LANG, and CARI LANG, individually, answering the complaint of the plaintiff, by their  
attorneys Quirk and Bakalor, P.C., respectfully state upon information and belief as follows:

**FIRST:** Deny having knowledge or information sufficient to form a belief  
as to any of the allegations contained in the paragraphs of the complaint numbered "4" through  
"8", "11" through "13", "16" and "30" through "50".

**SECOND:** Deny each and every allegation contained in the paragraphs of the  
complaint numbered "15", "17" through "19", "22" through "26", "51", "55" through "59" and  
"63" through "67".

**THIRD:** Deny having knowledge or information sufficient to form a belief  
as to any of the allegations contained in the paragraph of the complaint numbered "20" and refer  
the Court to the lift tickets or multiple day passes for the precise language set forth therein.

**FOURTH:** Deny each and every allegation contained in the paragraph of the complaint numbered "21", except admit that, while the plaintiff and the infant defendant were skiing at the CATAMOUNT SKI AREA, they came in contact with each other and deny having knowledge or information sufficient to form a belief as to any of the allegations contained in said paragraph of the complaint as to what injuries, if any, plaintiff sustained.

**FIFTH:** Deny having knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraphs of the complaint numbered "27", "52", "60" and "68 and refer all matters of law to the Court pertaining to CPLR §1602, including §1602(7).

**SIXTH:** Deny each and every allegation contained in the paragraphs of the complaint numbered "28", "53", "61" and "69" in that these answering defendants have no knowledge as to what injuries, if any, were suffered by the plaintiff and there is no lower federal court than the Court in which this action is presently pending.

***AS AND FOR A FIRST AFFIRMATIVE DEFENSE***

**SEVENTH:** There are inherent and known risks of skiing.

**EIGHTH:** One of the inherent and known risks of skiing is the possibility that the skier may sustain personal injuries.

**NINTH:** One of the inherent and known risks of skiing is the possibility that the skier may sustain personal injuries by having another skier come in contact with him.

**TENTH:** One of the inherent and known risks of skiing is the possibility that the skier may sustain personal injuries by having another skier who was skiing negligently come in contact with him.

**ELEVENTH:** Plaintiff, by voluntarily engaging in the sport of skiing, assumed the risk of sustaining personal injury.

**TWELFTH:** Plaintiff, by voluntarily engaging in the sport of skiing, assumed the risk of sustaining personal injury by coming into contact with another skier.

**THIRTEENTH:** Plaintiff, by voluntarily engaging in the sport of skiing, assumed the risk of sustaining personal injury by coming into contact with another skier who was skiing negligently.

**FOURTEENTH:** Plaintiff contends in his complaint that, while skiing, he sustained injury through another skier coming into contact with him.

**FIFTEENTH:** Plaintiff contends in his complaint that, while skiing, he sustained injury through another skier who was skiing negligently coming into contact with him.

**SIXTEENTH:** By reason of the inherent and known risks of skiing set forth above, plaintiff's cause of action against these answering defendants, based on alleged negligence or based on the alleged negligence of failing to abide by published rules, is barred as a matter of law.

***AS AND FOR A SECOND AFFIRMATIVE DEFENSE***

**SEVENTEENTH:** The plaintiff knew that one of the inherent risks of skiing was the possibility that another skier would come into contact with him.

**EIGHTEENTH:** The plaintiff knew that one of the inherent risks of skiing was the possibility that another skier who was skiing negligently would come into contact with him.

**NINETEENTH:** One of the inherent and known risks of skiing is the possibility that the skier may sustain personal injuries by having another skier who was skiing negligently come in contact with him.

**TWENTIETH:** Plaintiff, by voluntarily engaging in the sport of skiing, with the aforesaid knowledge, assumed the risk of sustaining personal injury.

**TWENTY-FIRST:** Plaintiff, by voluntarily engaging in the sport of skiing, with the aforesaid knowledge, assumed the risk of sustaining personal injury by coming into contact with another skier.

**TWENTY-SECOND:** Plaintiff, by voluntarily engaging in the sport of skiing, with the aforesaid knowledge, assumed the risk of sustaining personal injury by coming into contact with another skier who was skiing negligently.

**TWENTY-THIRD:** By reason thereof, plaintiff's cause of action herein against these answering defendants, based on alleged negligence or based on alleged negligence of failing to abide by published rules, is barred as a matter of law.

***AS AND FOR A THIRD AFFIRMATIVE DEFENSE***

**TWENTY-FOURTH:** That, if the plaintiff sustained any injuries as alleged, such injuries were caused by the plaintiff's own fault and negligence and/or culpable conduct, wholly or partially and/or implied and/or express assumption of risk.

***AS AND FOR A FOURTH AFFIRMATIVE DEFENSE***

**TWENTY-FIFTH:** The accident herein was caused by the carelessness, negligence and/or recklessness of the plaintiff.

**TWENTY-SIXTH:** The plaintiff's negligence was greater than the total amount of negligence attributable to all defendants herein.

**TWENTY-SEVENTH:** Plaintiff's negligence as alleged above, whether greater or less than the total amount of negligence attributable to all defendants, is a bar to plaintiff's action.

***AS AND FOR A FIFTH AFFIRMATIVE DEFENSE***

**TWENTY-EIGHTH:** That liability, if any, found against these answering defendants is to be limited pursuant to Section 1600 *et. seq.* of the CPLR since liability, if any, found against these answering defendants will be 50 per cent or less of the total liability to be assigned to all persons liable to the plaintiffs for the plaintiff's damages.

***AS AND FOR A SIXTH AFFIRMATIVE DEFENSE***

**TWENTY-NINTH:** That damages, if any, found against these answering defendants are to be reduced by each and every source of payment, including but not limited to, insurance benefits and any other collateral source of payment, for past or future costs or expenses alleged to have been incurred by the plaintiff and for which recovery is sought in the instant action.

***AS AND FOR AN SEVENTH AFFIRMATIVE DEFENSE***

**THIRTIETH:** The infant defendant was faced with an emergency caused by plaintiff's conduct and, under such emergency condition, acted reasonably.

***AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE***

**THIRTY-FIRST:** Plaintiff is not a third-party or incidental beneficiary to any published rules allegedly violated by either of the answering defendants herein.

***AS AND FOR A CROSS-CLAIM AGAINST DEFENDANTS  
CATAMOUNT SKI AREA, WILLIAM GILBERT, DONALD  
EDWARDS AND CATAMOUNT DEVELOPMENT CORPORATION,  
THESE ANSWERING DEFENDANTS RESPECTFULLY ALLEGE  
UPON INFORMATION AND BELIEF AS FOLLOWS:***

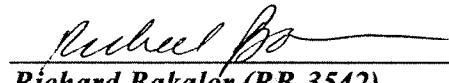
***THIRTY-SECOND:*** That if the plaintiff was caused to sustain damages at the time and place and in the manner and due to the circumstances set forth in the plaintiff's complaint, through any carelessness, recklessness and/or negligence, other than the plaintiff's own carelessness, recklessness and/or negligence, said damages were caused and contributed to by reason of the carelessness, recklessness and negligence and/or acts of omission or commission of the defendants CATAMOUNT SKI AREA, WILLIAM GILBERT, DONALD EDWARDS and CATAMOUNT DEVELOPMENT CORPORATION.

***THIRTY-THIRD:*** That by reason of the foregoing, the defendants CATAMOUNT SKI AREA, WILLIAM GILBERT, DONALD EDWARDS and CATAMOUNT DEVELOPMENT CORPORATION will be liable to these answering defendants for the full amount of any recovery herein by plaintiff or for that proportion thereof caused by the defendants CATAMOUNT SKI AREA, WILLIAM GILBERT, DONALD EDWARDS and CATAMOUNT DEVELOPMENT CORPORATION, who are bound to pay any and all attorneys' fees and costs of investigation and disbursements.

***WHEREFORE,*** defendants ZACK LANG, an infant by his mother and natural guardian CARI LANG, and CARI LANG, individually, demand judgment dismissing the complaint of the plaintiff, together with the costs and disbursements of this action, and that the ultimate rights of the defendants as between themselves be determined in this action, and that these answering defendants have judgment over and against the defendants CATAMOUNT SKI

AREA, WILLIAM GILBERT, DONALD EDWARDS and CATAMOUNT DEVELOPMENT CORPORATION for all or that portion of any verdict or judgment which may be obtained herein by plaintiff against these answering defendants to the extent that the responsibility of the defendants CATAMOUNT SKI AREA, WILLIAM GILBERT, DONALD EDWARDS and CATAMOUNT DEVELOPMENT CORPORATION caused or contributed thereto, together with the costs and disbursements of the action, plus all attorneys' fees and all other costs herein.

***QUIRK and BAKALOR, P.C.***

  
**Richard Bakalor (RB-3542)**  
Attorneys for Defendants **ZACK  
LANG, an infant by his mother and  
natural guardian CARI LANG, and  
CARI LANG, individually**  
845 Third Avenue  
New York NY 10022  
(212) 319-1000

cerury that the within  
 has been prepared by me with the original intent to be a true and complete copy  
 state that I am  
 the attorney(s) of record for  
 action; I have read the foregoing  
 in the within  
 and know the contents thereof;  
 the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters  
 I believe it to be true. The reason this verification is made by me and not by

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

STATE OF NEW YORK, COUNTY OF

ss.:

The name signed must be printed beneath

I, the undersigned, being duly sworn, depose and say: I am

Individual Verification in the action; I have read the foregoing

and know the contents thereof; the same is true to my own knowledge, except

as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

the of

a corporation and a party in the within action; I have read the foregoing

and know the contents thereof; and the same is true to my own knowledge,

except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.: (If more than one box is checked—indicate after names type of service used.)

I, the undersigned, being sworn, say: I am not a party to the action, am over 18 years of age and reside at FLUSHING, NY

January 17, 2008

Answer

On

Service By Mail by mailing a copy to each of the following persons at the last known address set forth after each name below.

Personal Service on Individual by delivering a true copy of each personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as *a party therein*:

Service by Electronic Means by transmitting a copy to the following persons by  FAX at the telephone number set forth after each name below  E-MAIL at the E-Mail address set forth after each name below, which was designated by the attorney for such purpose, and by mailing a copy to the address set forth after each name.

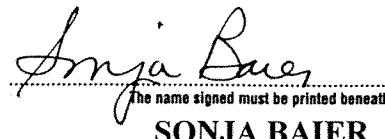
Overnight Delivery Service by dispatching a copy by overnight delivery to each of the following persons at the last known address set forth after each name below.

OSHMAN & MIRISOLA, LLP  
 Attorneys for Plaintiff  
 42 Broadway – 10<sup>th</sup> Floor  
 New York NY 10004

ROEMER WALLENS & MINEAUZ LLP  
 Attorneys for Deft. CATAMOUNT  
 13 Columbia Circle  
 Albany NY 12203

STEVEN A. LEE  
 Notary Public, State of New York  
 No. 02LE6101550  
 Qualified in New York County  
 Commission Expires November 17, 2011



  
 SONJA BAE  
 The name signed must be printed beneath

Sworn to before me on January 17, 2008

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JAMES A. CLARKE,

Plaintiff,

-against-

CATAMOUNT SKI AREA, et al.,

Defendants.

## ANSWER

## QUIRK AND BAKALOR, P.C.

Attorney(s) for Defendants ZACK LANG and CARI LANG

Office and Post Office Address, Telephone

845 Third Avenue  
NEW YORK, NEW YORK 10022  
(212) 319-1000

To

Signature (Rule 130-1.1-a)

Print name beneath

Service of a copy of the within is hereby admitted.

Attorney(s) for

Dated: \_\_\_\_\_

## PLEASE TAKE NOTICE:

 NOTICE OF ENTRYthat the within is a (*certified*) *true copy of a*  
duly entered in the office of the clerk of the within named court on NOTICE OF SETTLEMENTthat an order  
will be presented for settlement to the HON.  
within named Court, at  
on at M.of which the within is a true copy  
one of the judges of the

Dated,

Yours, etc.

QUIRK AND BAKALOR, P.C.